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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

JACOB MANDEL, CHARLES VOLK, LIAM  
KERN, MASHA MERKULOVA, AARON  
PARKER, and STEPHANIE ROSEKIND,

Plaintiffs,

v.

BOARD OF TRUSTEES of the CALIFORNIA  
STATE UNIVERSITY, SAN FRANCISCO  
STATE UNIVERSITY, and, in their official and  
individual capacities, LESLIE WONG, MARY  
ANN BEGLEY, LUOLUO HONG,  
LAWRENCE BIRELLO, REGINALD  
PARSON, OSVALDO DEL VALLE,  
KENNETH MONTEIRO, RABAB  
ABDULHADI, BRIAN STUART, ROBERT  
NAVA, MARK JARAMILLA, VERNON  
PICCINOTTI, and SHIMINA HARRIS,

Defendants.

**Case No. 3:17-CV-03511-WHO**

**PLAINTIFFS' OPPOSITION TO  
REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF DEFENDANT DR. RABAB  
ABDULHADI'S MOTION TO DISMISS  
[ECF 80]**

Date: November 8, 2017  
Time: 2:00 p.m.  
Location: Courtroom 2 (17th floor)  
Judge: William H. Orrick

Complaint Filed: June 19, 2017  
First Am. Complaint Filed: August 31, 2017

**I. INTRODUCTION**

With her motion to dismiss the First Amended Complaint (“FAC”), Dr. Abdulhadi filed a request for judicial notice (the “RJN”) asking the Court to take judicial notice of four “documents.” ECF 80. But at least with respect to three of the documents—Exhibits A through C—what the RJN really seeks is for the Court to take judicial notice of the “facts” contained within these documents and/or to make factual findings based on other contents. As a matter of law, this is impermissible. Separately, she gives no reason and makes no argument as to why the request to take judicial notice of Exhibit D is appropriate. Therefore, her request as to each exhibit should be denied.

**II. BACKGROUND**

As noted, above, Dr. Abdulhadi’s RJN identifies four documents. Exhibit A—a substitute copy of which is attached to an errata filed as ECF 83—is the “Independent Review Regarding April Event: Summary Report of Findings, San Francisco State University, August 24, 2016” (the “Report”). Exhibit B is the “Faculty & Staff Advisors Of Recognized Student Organizations” webpage (the “Advisors Webpage”). Exhibit C is a 30-page SFSU document entitled “Student Organization Advisor Orientation” (“Advisor Orientation Document”). Exhibit D is Dr. Abdulhadi’s now-moot motion to dismiss the original complaint. Although the RJN sets forth that this is ECF 44, ECF 44 is Dr. Abdulhadi’s motion to strike. It is assumed that she meant to reference her motion to dismiss—ECF 43.

**III. LEGAL STANDARD**

Federal Rule of Evidence 201 “governs judicial notice of an adjudicative fact.” Fed. R. Evid. 201(a). “Adjudicative facts are simply the facts of the particular case.” Notes of Advisory Committee on Proposed Rules Subdivision (a). The “kinds of facts that may be judicially noticed” are those that “are not subject to reasonable dispute” because it “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). A “high degree of indisputability is the essential prerequisite.” Fed. R. Evid. 201, Advisory Comm. Notes (2011). To that end, “[c]are must be taken that Rule 201 not be used as a substitute for more rigorous evidentiary requirements and careful factfinding.” *Korematsu v. United States*, 584 F.Supp. 1406,

1415 (N.D. Cal. 1984); *see also* Rule 201 Advisory Comm. Notes (2011) (“[T]he tradition has been one of caution in requiring that the matter be beyond reasonable controversy.”).

#### IV. DEFENDANT’S REQUEST FOR JUDICIAL NOTICE SHOULD BE DENIED

With respect to Exhibits A through C, the RJN makes two arguments. First, it asserts that any statements therein are judicially noticeable because they “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” RJN at 2:25-27 (quoting Fed. R. Evid. 201(b)). In effect, this is asking the Court to accept as true the “facts” in the Report and in the policies. For example, she asks the Court to accept as true the “finding that there was no credible threat to public safety.” Kleiman Decl. (ECF 80) ¶ 3.b. As another example, she asks the Court to accept as true the finding “that the actions were directed towards the mayor, not the audience” and that this “rebut[s] plaintiffs’ claim of antisemitism.” *Id.* ¶ 3.c.

But it is black-letter law that a court may not take judicial notice of a fact that is “subject to reasonable dispute.” Fed. R. Evid. 201(b); *Lee*, 250 F.3d at 689. The “facts” contained in the Report and the sources from which they came are, indeed, the subject of dispute. Indeed, the FAC—which must be taken as true—alleges facts to the contrary. Plaintiffs expressly allege that that they feared for their safety. FAC ¶¶ 79, 85, 90, 91, 93.<sup>1</sup> Plaintiffs also expressly allege that the disruptors’ actions were not solely directed at Mayor Barkat. *Id.* ¶¶ 72, 93, 101.<sup>2</sup> Moreover, the FAC is not the only time facts to the contrary have been alleged. The Report itself makes clear that

<sup>1</sup> *See* FAC ¶ 79 (“As the disruptive individuals were shouting, some covering their faces with keffiyehs and advancing toward Plaintiffs, many of the audience members feared for their safety and for the safety of the other individuals who had come together to hear from, and engage with, Mayor Barkat.”); *id.* ¶ 85 (“Unfortunately, as the event was shut down by the shouting group of GUPS members and others, Mr. Mandel’s excitement was replaced by fear and anger, as he was scared for both himself and his fellow students.”); *id.* ¶ 90 (“Plaintiff Stephanie Rosekind told a uniformed officer that she did not feel safe.”); *id.* ¶ 91 (“They [the audience members] felt powerless, scared for their safety.”); *id.* ¶ 93 (“Plaintiffs were then forced to stand by, in fear of threatened violence by the disruptors, while the entire event was completely shut down.”).

<sup>2</sup> *See* FAC ¶ 72 (stating that two GUPS student leaders “began leading the entire group in the loud shouting of antagonizing and threatening phrases . . . directed at Mayor Barkat, Plaintiffs, and the other students and audience members who came to hear Mayor Barkat speak”); *id.* ¶ 93 (“After Mayor Barkat left the room, the disrupting individuals cheered proudly and continued to shout ‘Get the fuck off our campus!’ to the Plaintiffs and other Jewish students and Jewish members of the community who remained in the room, clearly directing their vitriol at Plaintiffs and other attendees.”); *id.* ¶ 101 (“[T]he disruptive individuals . . . were threatening the Jewish individuals with violence, as they shouted . . . not only to Mayor Barkat, but also to Plaintiffs and other Jewish students and community members who attended the event.”).

1 these points are disputed, including contrary views on both the question of a threat to public safety  
2 and whether the disruptors' actions were directed at the audience. RJN Exhibit A at 13-14.<sup>3</sup>

3 The RJN also argues the facts in these documents are judicially noticeable "because they  
4 were posted on an officially [sic] government website." RJN at 3:1-2 (citing *Daniels-Hall v. Nat'l*  
5 *Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010)). This, however, is a selective reading of  
6 *Daniels-Hall*. When including the second half of the sentence the RJN quotes from *Daniels-Hall*,  
7 that opinion states that "[i]t is appropriate to take judicial notice of [] information . . . made publicly  
8 available by government entities . . . and neither party disputes the authenticity of the websites or the  
9 accuracy of the information displayed therein." *Id.* 629 F.3d at 998-99. Here, as noted above,  
10 Plaintiffs (and others) dispute the accuracy of the information in the Report. Moreover, to the extent  
11 *Daniels-Hall* can be read narrowly, as the RJN reads it, there is an important exception to this rule:  
12 while a court "may take judicial notice of 'matters of public record,'" it "may not take judicial notice  
13 of a fact that is 'subject to reasonable dispute.'" *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th  
14 Cir. 2001). Therefore, the request as to Exhibit A should be denied.

15 Moving on to Exhibits B and C—the Advisors Webpage and the Advisor Orientation  
16 Document—the RJN does not explain why Dr. Abdulhadi wants the Court to take judicial notice of  
17 certain "facts" therein, why such "facts" are not subject to reasonable dispute, or why such "facts"  
18 can be accurately and readily determined from sources whose accuracy cannot reasonably be  
19 questioned. This in and of itself is fatal to her request as to these exhibits. Fed. R. Evid. 201(b),  
20 (c)(2) (requiring judicial notice only when "the court is supplied with the necessary information").  
21 But, even if that were not the case, it appears that Dr. Abdulhadi wants the Court to use certain  
22 provisions of these documents to make a factual finding in her favor. The FAC cites these  
23 documents and alleges that Dr. Abdulhadi is in violation of certain of their provisions. *Id.* ¶¶ 82,  
24 162. Dr. Abdulhadi's motion to dismiss asks the Court to find that she was not in violation of those

25  
26 <sup>3</sup> See RJN Exhibit A at 13 ("One witness shared: 'At one point, this stuck with me, it made me  
27 choke up – the demonstrators were chanting 'we don't want you on this campus' and 'get the fuck  
28 off this campus' ... It gave voice to us that the vitriol was not being directed just to the Mayor, but  
felt very personal.'"); *id.* at 13-14 ("The Assistant Director of SF Hillel noted that some students  
were crying and some left because they felt unsafe . . . 'The space does not feel safe.' . . . [S]he felt it  
had already escalated and her students did not feel safe.").

provisions because of other provisions therein. ECF 79 at 8 n.5. Asking the Court to decide an issue of fact like this is improper. *Eidson v. Medtronic, Inc.*, 981 F.Supp.2d 868, 878 (N.D. Cal. 2013) (while matters of public record are proper subjects of judicial notice, a court may take notice only of the authenticity and existence of such a document, “not the veracity or validity of its contents”) (citation omitted). Therefore, the request as to Exhibits B and C should be denied.

As to Exhibit D, the RJN does not explain which “facts” it asks the Court to judicially notice or why the request seeks judicial notice of a now-moot motion. This alone is fatal to the request. Fed. R. Civ. P. 201(c)(2). Regardless, neither Rule 201(b) nor *Lee* supports the proposition that “a court can take judicial notice of court filed documents.” RJN at 3:4-6. Rule 201(b) says nothing about court filed documents. *Lee* discussed documents filed with the court, but its focus is on judicial opinions. 250 F.3d at 690. And *Lee*’s rationale for doing so is at odds with the RJN’s intentions here: “[W]hen a court takes judicial notice of another court’s opinion, it may do so ‘not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity.’” *Id.* (quoting *S. Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Grp. Ltd.*, 181 F.3d 410, 426–27 (3rd Cir. 1999)); *see also Eidson*, 981 F.Supp.2d at 878 (a court may take notice only of the authenticity and existence of matters of a particular public record, “not the veracity or validity of its contents”) (citation omitted). Moreover, the original motion to dismiss is replete with “facts” that are disputed. *See, e.g.*, Mot. at 8:7-10 (“Plaintiffs have brought suit against a number of individuals because they disagree with their political views”); *id.* at 12-15 (“Most of the allegations constitute irrelevant propaganda that goes back to as far as 1968 and rely on an intentionally distorted and self-serving understanding of anti-Semitism”); *see Lee*, 250 F.3d at 689-90. As such, whether the request is proper turns on the “facts” for which she seeks judicial notice. Without this information, the Court cannot evaluate the request and thus, as to Exhibit D, it should be denied.

## **V. CONCLUSION**

For the foregoing reasons, Dr. Abdulhadi’s request for judicial notice should be denied.

1 Dated: October 11, 2017

WINSTON & STRAWN LLP

2  
3 By: /s/ Robb C. Adkins

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